

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 92**

[Docket No. FR-3836-P-01]

RIN 2501-AB94

HOME Investment Partnerships Program**AGENCY:** Office of the Secretary, HUD.**ACTION:** Proposed rule.

SUMMARY: This rule proposes to amend the HOME Investment Partnerships Program regulation with respect to the operation of the HOME formula; the threshold for applicability of the 20% very low-income requirement for rental housing; and, conflict of interest provisions as they apply to developers. **DATES:** Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act Statement**

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013. This proposed rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under Title II (42 U.S.C. 12701-12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990).

Implementing regulations for the HOME Program are at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103-120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103-233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258). An interim rule with clarifying changes to the HOME rule and a request for additional comments before the issuance of a final rule is also published in this issue of the **Federal Register**.

One of the purposes of this rule is to propose a change in the operation of the HOME formula. Section 92.50(d)(3) would be revised to maximize the number of units of general local government which receive an initial allocation of HOME funds.

Formerly, units of general local government, after an initial distribution of funds available for allocation, were eliminated at \$250,000 and below. They were eliminated from the pool of eligible jurisdictions and their allocations were redistributed among other units of general local government. This redistribution technique continued until 95% of the funds had been distributed among units of general local government that received \$500,000 or more. The new method would drop only one jurisdiction on each recalculation, and redistribute funds to all others, thus assuring that the maximum number of units of general local government receive an allocation.

A further rule change is proposed to § 92.252, Qualification as affordable housing and income targeting: Rental housing, that would change the threshold for the 20% very-low income occupancy requirement from a project with three or more rental units to a project with five or more rental units.

Finally, this rule proposes to apply, as appropriate, the conflict of interest provisions at § 92.356 to housing developers, whether private, for profit, or non-profit, of projects assisted with HOME funds. The general conflicts

prohibition in § 92.356(c) cannot be specifically applicable to such developers (including their employees, agents, consultants, and officers), because they do obtain a financial interest or benefit from a HOME assisted activity, for example, developer's fees. The conflict with respect to developers arises when they receive an unfair advantage for the HOME-assisted affordable housing. The range of situations in which a conflict may arise includes, for example, an individual who creates a non-profit, serves as executive director, receives HOME funds to construct rental housing, and then becomes the first to occupy a rental unit; or an individual employed as a receptionist at a non-profit that develops and manages a HOME-assisted project who becomes homeless, and applies for a newly-vacated unit in the project. This rule proposes that no owner, employee, agent, consultant, or officer of a developer of a project assisted with HOME funds may occupy a HOME-assisted affordable housing unit in the project. As is the case with the present conflict of interest provision, the rule would permit requests for exceptions. However, rather than provide for HUD review, as is presently done for exception requests by participating jurisdictions, state recipients and subrecipients, this rule would permit participating jurisdictions to grant exceptions upon consideration of factors delineated in the rule.

III. Findings and Certifications*Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the

undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23376) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this proposed rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule proposed to be amended by this rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this proposed rule would only make limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this proposed rule would have an indirect, though beneficial, impact on family formation, maintenance, and general well-being. As such, it is not subject to further review under the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing

and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations, would be amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.50, paragraph (d)(3) would be revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(d) * * *

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible jurisdictions on each successive recalculation. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of \$500,000 or more.

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3. In § 92.252, the introductory text of paragraph (a)(2) would be revised to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) Has, in the case of projects with five or more rental units, not less than 20 percent of the rental units:

* * * * *

4. In § 92.356, a new paragraph (f) would be added to read as follows:

§ 92.356 Conflict of interest.

* * * * *

(f) *Developers*—(1) *Prohibition*. No owner, employee, agent, consultant, or officer of a developer, whether private, for profit, or non-profit, of a project assisted with HOME funds may occupy a HOME-assisted affordable housing unit in the project.

(2) *Exceptions*. Upon the written request of a housing developer, the participating jurisdiction may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the developer's HOME-assisted program or project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed;

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

Dated: May 16, 1995.

Henry G. Cisneros,

Secretary.

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